

## REMARKS

The Office Action mailed on December 29, 2003, has been reviewed and the comments of the Patent and Trademark Office have been considered. Prior to this paper, claims 1 and 3-18 were pending in the present application. By this paper, Applicants cancel claims 14 and 16 without prejudice or disclaimer, and do not add any claims. Therefore, claims 1, 3-13, 15, and 17-18 are pending in the present application.

Applicants respectfully submit that the present application is in condition for allowance for the reasons that follow.

### **Recordation of Substance of Interview (Telephone Interview)**

The PTO was contacted to arrange an interview, but such was declined in view of the finality of the Office Action.

### **Indication of Allowable Subject Matter**

Applicants thank examiner Savage for indicating that claims 13, 15, 17 and 18 contain allowable subject matter.

### **Rejections Under 35 U.S.C. § 112, First Paragraph**

Claims 14 and 16 stand rejected under 35 U.S.C. §112, first paragraph. To expedite prosecution, Applicants cancel claims 14 and 16 without prejudice or disclaimer.

**Rejections Under 35 U.S.C. §§ 102/103**

Independent claim 1 stands rejected under 35 U.S.C. §102(b) as being anticipated by Ishibe (EP 0 561 001) and under 35 U.S.C. §103(a) as being obvious in view of Ishibe. Independent claim 10 stands rejected under 35 U.S.C. §103(a) as being obvious over Ishibe in view of De Bruyne (USP 4,983,467). The dependent claims stand rejected variously as being anticipated or obvious in view of the just cited references and variously further in view of Fisher (USP 3437,457). Applicants respectfully traverse all of the rejections.

**Claim 1 and its Dependencies**

In regard to independent claim 1, Applicants rely on MPEP § 2131, entitled “Anticipation – Application of 35 U.S.C. 102(a), (b), and (e),” which states that a “claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference,” and MPEP § 2143, which states that “the prior art reference (or references when combined) must teach or suggest all the claim limitations.” It is respectfully submitted that Ishibe does not describe each and every element of claim 1.

**The Office Action’s broad definition of “web” does not comport with case law cited in the MPEP guidelines for determining the plain meaning of a claim term.** The Office Action states that a “web can be broadly defined as a portion of material having length and width each greater than its thickness (see class 428 definition of the term ‘web’).” (Office Action page 8, third full paragraph.) Such a definition ignores the MPEP’s requirement that claim terms 1) must be given their plain meaning, and 2) the plain meaning must be the meaning given to the term by those of ordinary skill in the art.

The MPEP states that “the words of a claim must be given their ‘plain meaning’” (MPEP § 2111.01, title of subsection 1.) Applicants respectfully submit that the “plain meaning” of the term “web” is decidedly not “a portion of material having length and width each greater than its thickness.” While such a definition may apply to the plain meaning of the term “plate,” it does not apply to the plain meaning of the term “web.” Still further, simply because a term used in a claim may have a number of differing (and perhaps even

contrary) definitions (a feature not uncommon in the English language), it does not mean that the PTO should utilize a definition that is removed from the subject matter respect to the claims and application, especially when such a definition is so far removed from the common meaning of the term, as is the case with the definition proffered in the Office Action.

Applicants recognize that the MPEP states that “the claims must be interpreted as broadly as their terms *reasonably allow*. This means that the words of the claim must be given their *plain meaning*.” (MPEP § 2111.01, subsection 1, first paragraph, emphasis added.) Applicants submit that the proffered definition is not a reasonable definition of the term “web,” since it is not the “plain meaning” of the term “web.”

Moreover, assuming *arguendo* that the word “web” may be as defined in the Office Action, such a meaning fails to comport with the second subsection of MPEP § 2111.01, which establishes the meaning of “plain meaning”: “‘plain meaning’ refers to the meaning given to the term by those of *ordinary skill in the art*.” (MPEP § 2111.01, second subsection, title, emphasis added.) In this case, the relevant art is fluid purification, as is evinced by the classification of the present invention (class 210). Applicants respectfully submit that one of ordinary skill in the art would not give the term “web” the meaning proffered in the Office Action, and that the PTO has not provided any evidence to the contrary. The very fact that the definition proffered in the Office Action is from the art class “stock materials or miscellaneous articles” (class 428) evinces that the proffered definition is decidedly not the plain meaning given to the term “web” by one of ordinary skill in the filter arts.

In contrast to the PTO’s lack of evidence as to the plain meaning of the word “web” given by the *ordinary filter artisan*, Applicants submit that GB 1,190,844, cited in Applicants specification at page 5, first paragraph, provides evidence that the ordinary filter artisan would consider the ordinary meaning of “web” to comport with the position taken by Applicants (see below) and not with the position taken in the Office Action. GB 1,190,844 teaches a “plurality of webs” at page 2, lines 35-38, with reference to Figure 1. As can be seen from the teachings of GB 1,190,844, webs 11, 12 and 13 are 1 are separate structures of metal fibers that can be handled separately and then brought into contact with each other.

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Applicants respectfully submit that the proffered definition of the term “web” can only be obtained by reading the terms of the claim in a vacuum, contrary to case law and the MPEP. “Claims are not to be read in a vacuum, and limitations therein are to be interpreted in light of the specification in giving them their ‘broadest reasonable interpretation.’ *In re Zletz*, 710 F.2d at 802 (CCPA 1969).” (MPEP § 2111.01, subsection 1.) One of ordinary skill in the art, after reading Applicants’ specification, would immediately recognize that the “webs” of claim 1 are separate structures of metal fibers that can be handled separately and then brought into contact with each other. By way of example, such a structure could be a membrane or tissue of metal fibers. Still further, one of ordinary skill would recognize that the claimed webs form an assemblage of long metal fibers, since powders, particles and short metal fibers (as taught by Ishibe to form the “Particle Layer,” see below) will not sufficiently overlap to form a web structure.

In view of this, Applicants submit that claim 1 is allowable over Ishibe for at least the reason that claim 1 recites that the layered filtering structure comprises a plurality of layers, “*each* layer comprising a *web* of metal fibers,” “said two layers being in contact with each other.” (Emphasis added.)

In contrast, Ishibe does not teach a plurality of layers *each* comprising a *web* of metal fibers. Ishibe does teach a filter having two layers, but at most only teaches that one of the layers is a layer comprising a web. In Ishibe, the filter comprises 1) a support layer, and 2) a particle layer. True, Ishibe teaches that the support layer can be formed from a sintered body of long fibers, and thus Applicants will assume *arguendo* that the support layer is a web. However, Ishibe teaches that, in contrast, the particle layer is formed from metal powder or short fibers. (Ishabe, page 5, line 57.) That is, Ishibe teaches that one of the layers is a particle layer, and does not teach or suggest that the layer is a web of metal fibers. Indeed, Ishibe cannot teach that the particle layer is a web of metal fibers, since Ishibe only teaches that particles, powders, and short metal fibers are used to make up one of the layers and, as noted above, one of ordinary skill in the art would recognize that powders, particles and short metal fibers will not sufficiently overlap to form a web structure.

Still further, Ishibe teaches away from a plurality of separate webs, as the particles, powders, and “short fibers” of the particle layer are merely deposited onto the support layer. In Ishibe, deposition is accomplished by immersing the support layer of Ishibe (which can be formed from long fibers) in a suspension of particles and evacuating the suspension through the support layer. As the support layer “filters” the particles from the suspension, the particles accrete on the support layer, and a second layer is thus formed. However, this is not the same as forming a separate web. Still further, Applicants respectfully submit that the deposition method of Ishibe may not work properly with a suspension of long fibers. Thus, Ishibe does not teach a second web. Further, Applicants respectfully submit that one of ordinary skill in the art, after reading Ishibe, would recognize that a web is not (it cannot be) formed in Ishibe from the “short fibers” of Ishibe in its particle layer, and thus, at most, Ishibe only teaches one web.

Because Ishibe teaches that only one layer can be a web of metal fibers, Ishibe fails to teach each and every element of claim 1. Claim 1 is therefore allowable.

\* \* \* \* \*

Claims 3-9, claims that depend from claim 1, stand rejected as being either anticipated by Ishibe or as being obvious in view of Ishibe when combined with various other references. Applicants respectfully submit that since Ishibe does not teach each and every element of claim 1, and none of the other cited references remedy the deficiencies of Ishibe, these claims are likewise allowable.

#### Claim 10 and its Dependencies

As noted above, independent claim 10 also stands rejected as being obvious over Ishibe in view of De Bruyne. Applicants respectfully submit that because claim 10 recites a plurality of webs, the claim is allowable for the same reasons that make claim 1 allowable, as discussed above. Specifically, Ishibe does not teach a plurality of webs in contact with one another, and De Bruyne fails to remedy this deficiency of Ishibe. Thus, claim 10 and the claims that depend from claim 10 are allowable for at least this reason. Reconsideration is respectfully requested.

**Conclusion**

Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Examiner Savage is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

Respectfully submitted,

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By 

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